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11
12 **UNITED STATES BANKRUPTCY COURT**
NORTHERN DISTRICT OF CALIFORNIA
13 **SAN FRANCISCO DIVISION**

14 **In re:**

15 **PG&E CORPORATION**

16 **- and -**

17 **PACIFIC GAS AND ELECTRIC
COMPANY,**

18 **Debtors.**

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

19 **STATEMENT OF THE OFFICIAL**
COMMITTEE OF UNSECURED
20 **CREDITORS REGARDING (I) THE**
PROPOSED DISCLOSURE STATEMENT
21 **AND (II) THE SOLICITATION**
PROCEDURES MOTION

- 22 ☐ Affects PG&E Corporation
23 ☐ Affects Pacific Gas and Electric
24 Company
25 ☒ Affects both Debtors

26 ** All papers shall be filed in the Lead
Case, No. 19-30088 (DM).*

Date: March 10, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Docket No. 5700 and 5835

27 The Official Committee of Unsecured Creditors (the "Creditors' Committee") appointed
28 in the above-captioned chapter 11 cases, by its attorneys Milbank LLP, hereby submits this

1 statement in connection with: (i) the *[Proposed] Disclosure Statement for the Debtors' and*
2 *Shareholder Proponents' Joint Chapter 11 Plan of Reorganization* (the "Disclosure Statement")¹
3 [Docket No. 5700]; and (ii) *Debtors' Motion for Entry of an Order (I) Approving Form and*
4 *Manner of Notice of Hearing on Proposed Disclosure Statement; (II) Establishing and Approving*
5 *Plan Solicitation and Voting Procedures; (III) Approving Forms of Ballots, Solicitation Packages,*
6 *and Related Notices; and (IV) Granting Related Relief* (the "Solicitation Procedures Motion")
7 [Docket No. 5835].
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9 The Creditors' Committee is mindful of, and intends to abide by, the Court's admonition
10 that parties should refrain from raising plan confirmation issues in connection with the approval
11 of the Disclosure Statement. Accordingly, with the exception of the issue discussed below, the
12 Creditors' Committee will simply note that, at this stage:
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- 14 (1) The Creditors' Committee has not approved the *Joint Chapter 11 Plan of*
15 *Reorganization dated January 31, 2010* (the "Plan") [Docket No. 5590] to
16 which the Disclosure Statement pertains, but rather continues, in accordance
17 with its statutory duty, to conduct due diligence on all issues under Bankruptcy
18 Code section 1129, including the Plan's feasibility;
- 19 (2) The Creditors' Committee has reached out to the Debtors with respect to its
20 ongoing diligence efforts and expects the Debtors to cooperate in that process
21 in good faith; and
- 22 (3) Pending further discussions with the Debtors, the Creditors' Committee
23 reserves all of its rights with respect to any and all issues relating to the
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28 ¹ Capitalized terms not otherwise defined herein have the respective meanings ascribed to them in the Disclosure Statement.

1 confirmability of the Plan and all other applicable requirements of the
2 Bankruptcy Code.

3 However, there is one particular concern that the Creditors' Committee is compelled to
4 raise with the Court at the Disclosure Statement stage because its resolution may be pertinent to
5 the solicitation of votes on the Plan and thus to the relief sought in the Solicitation Procedures
6 Motion.²

7
8 Specifically, Section 10.3 of the Plan provides as follows:

9 10.3 **Release and Discharge of Debtors.** Upon the Effective Date and in
10 consideration of the distributions to be made hereunder, except as otherwise expressly
11 provided herein, each holder (as well as any representatives, trustees, or agents on
12 behalf of each holder) of a Claim or Interest and any affiliate of such holder shall be
13 deemed to have forever waived, released, and discharged the Debtors, to the fullest
14 extent permitted by section 1141 of the Bankruptcy Code, of and from any and all
15 Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Upon the
16 Effective Date, all such Persons shall be forever precluded and enjoined, pursuant to
17 section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged
18 Claim against or Interest in the Debtors.

19 While the Debtors will be entitled, on and after the Effective Date, to the protections of the
20 discharge provisions of Bankruptcy Code section 1141(d), the language in Section 10.3 goes well
21 beyond the statute by foisting what amounts to a general release upon all creditors receiving
22 distributions under the Plan – even creditors whose claims, according to the Debtors, are
23 unimpaired by the Plan. It is not at all clear why the Debtors are entitled to extract a non-
24 consensual release beyond the discharge the Debtors are already receiving under section 1141(d),
25 especially when such a release potentially infringes upon the rights of creditors whose legal,
26 contractual, and equitable rights are supposed to be left unaltered. 11 U.S.C. § 1124.

27 Section 10.3 presents particular concerns to vendors and other counterparties to prepetition
28 contracts with the Debtors who may have contractual and/or common law rights of

² The Creditors' Committee did address this issue with the Debtors during the meet-and-confer period, but the parties were unable to resolve it consensually.

1 indemnification, contribution and similar rights against the Debtors. Depriving these parties of
2 their rights, while at the same time declaring their claims to be unimpaired and denying them the
3 right to vote on the Plan, is clearly both inequitable and at odds with Bankruptcy Code section
4 1124. See, e.g., In re Chassix Holdings, Inc., 533 B.R. 64, 81 (Bankr. S.D.N.Y. 2015) (“If a
5 creditor must release a claim . . . (as a condition to whatever payment or other treatment the plan
6 provides for the creditor’s claim against the debtor), it is difficult to understand how such a creditor
7 could properly be considered ‘unimpaired’ by the Plan in the first place.”).

8
9 Accordingly, the Plan must be modified to ensure that the Debtors’ general unsecured
10 creditors whose claims are declared to be unimpaired are not deprived, inadvertently or otherwise,
11 of any of their legal, contractual, or equitable rights they are entitled to fully retain under section
12 1124 of the Bankruptcy Code. Without such modification, those creditors are clearly impaired
13 and should be entitled to vote – which is why this issue is ripe as part of the Court’s consideration
14 of the Disclosure Statement and the Solicitation Procedures Motion.
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16 To that end, the Creditors’ Committee requests that Section 10.3 be replaced in its entirety
17 with the following:

18 **10.3 Release and Discharge of Debtors.** Upon the Effective Date, the Debtors
19 shall be discharged to the fullest extent permitted by Bankruptcy Code section
20 1141. For the avoidance of doubt, and notwithstanding any provision to the
21 contrary in the Plan, any Plan Document or the Confirmation Order, nothing in
22 the Plan, any Plan Document or Confirmation Order shall impair or otherwise
23 alter any indemnification obligations, defenses, counterclaims, cross-claims, or
24 third party claims, including any rights to equitable comparative contribution,
25 partial or comparative indemnity, setoff, or recoupment, that the holder of any
26 General Unsecured Claim may have against any Debtor or Reorganized Debtor.

27 The Creditors’ Committee has also suggested to the Debtors certain drafting
28 revisions of both the Plan and the Disclosure Statement, most of which the Creditors’
Committee views as non-controversial. Thus, the Creditors’ Committee expected to
resolve most or all of the issues it has raised as part of the meet-and-confer process in

1 advance of the Disclosure Statement hearing. To date, however, the Debtors have refused
2 to accept certain of the Creditors' Committee's comments. These comments fall into two
3 categories:

4 1. Releases: The Plan makes the Creditors' Committee one of the "Releasing
5 Parties," but fails to include the Creditors' Committee among the "Released Parties." The
6 Disclosure Statement contains no explanation as to why the Debtors believe it may be
7 appropriate to force any party, let alone a statutory committee, to grant a non-consensual
8 and non-mutual release in the Plan. In fact, imposing a non-consensual release simply is
9 not appropriate. See In re Hotel Mt. Lassen, Inc., 207 B.R. 935, 941 (Bankr. E.D. Cal.
10 1997) ("In the Ninth Circuit and other jurisdictions that prohibit compelled third-party
11 releases, any third-party release associated with a plan of reorganization draws its vitality
12 from its status as a voluntary contractual agreement between the releasing and the released
13 parties, rather than by virtue of the court's order confirming the plan."). In a typical chapter
14 11 plan, a creditors' committee, together with its members and professionals, are granted
15 a release in return for giving a release. To the extent the Debtors refuse to provide this
16 customary release to the Creditors' Committee and its related parties, the Creditors'
17 Committee should be excluded from the definition of "Releasing Parties."

18 2. Trustee Protections:³ The various funded debt documents to which the
19 Debtors are party compel the payment of the trustees' fees and expenses, and grant the
20 trustees charging liens to protect their entitlement to same. Notwithstanding this fact, the
21 Debtors have resisted including language in the Plan and Disclosure Statement confirming
22 these rights, arguing that the settlement they had reached in the Noteholder RSA excluded
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28 ³ While the various indenture trustees and agents will likely raise this issue themselves, it was the
Creditors' Committee that has transmitted their aggregated comments to the Debtors.

1 these rights. However, the trustees were not parties to the Noteholder RSA, and the
2 noteholders who were (which is only a subset of noteholders) do not have the right to waive
3 the trustee's rights (that are separate from the noteholders' own). To the extent the Debtors
4 refuse to comply with their contractual obligation to pay these amounts, these amounts will
5 be deducted from the distributions to which noteholders are entitled to under the Plan. To
6 the extent that the Debtors continue to refuses to pay such amounts, the Disclosure
7 Statement should be revised to include a discussion of this fact.
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9 Dated: March 6, 2020

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11 **MILBANK LLP**

12 /s/ Gregory A. Bray

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